

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ANTHONY MILLER,

Defendant-Appellant.

UNPUBLISHED

June 19, 2003

No. 238493

Oakland Circuit Court

LC No. 2001-178217-FC

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendant was convicted of first-degree premeditated murder, MCL 750.316, and sentenced to life imprisonment. He appeals as of right. We affirm.

Defendant and the victim were both in attendance at a neighbor's party when the victim physically broke up a fight involving defendant. As defendant walked away from the scene, witnesses heard him shouting threats to return and shoot someone. The victim thereafter followed defendant back to defendant's nearby trailer home. Defendant then emerged from his home with a bow and arrow, pulled back on the bow, and released the arrow. The arrow struck the victim in the heart, killing him.

Defendant first argues that his conviction should be reversed because the trial court erred in failing to grant a pretrial motion to quash the information for insufficient evidence. We review this issue de novo for an abuse of discretion. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002). However, a later conviction based on sufficient evidence nullifies any erroneous pretrial determination of sufficiency. *Id.*

The district court must bind over a defendant if it finds probable cause that a felony was committed and that the defendant committed the felony. MCL 766.13; MCR 6.110(E); *People v Goecke*, 457 Mich 442, 469-70; 579 NW2d 868 (1998). At the preliminary examination, the prosecution must present evidence of "each element of the crime charged or evidence from which the elements may be inferred." *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989).

Under MCL 750.316, first-degree murder requires proof of an intentional, premeditated, and deliberate killing. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). Premeditation and deliberation may be established by evidence of: (1) the prior relationship of

the parties, (2) the defendant's actions before the killing, (3) the circumstances of the killing, and (4) the defendant's conduct after the killing. *People v Anderson*, 209 Mich App 527; 531 NW2d 780 (1995).

Here, evidence at the preliminary examination was sufficient to establish, or at the very least allow an inference of, each element of first-degree premeditated murder. The prosecution and defendant stipulated that the victim died from an arrow wound to the chest, which was caused by defendant. One witness testified that she saw defendant take aim at the victim. After firing the arrow, defendant remarked, "[H]ere, take that." This evidence supports an inference of intent. Testimony regarding defendant's threats made before leaving the party and the amount of time that passed between the fight and the killing—five to eight minutes—were sufficient to establish premeditation and deliberation.

Sufficient evidence of each element of first-degree premeditated murder was introduced at the preliminary hearing; therefore, the district court did not err in refusing to grant defendant's motion to quash the information. Furthermore, because defendant was convicted after a fair trial, any error in refusing to grant defendant's pretrial motion was rendered harmless by the subsequent conviction. See *Libbett*, *supra* at 357.

Defendant next argues that his conviction should be reversed because there was insufficient evidence to support his conviction. In the alternative, he argues the trial court erred in failing to grant his motion for judgment notwithstanding the verdict.

A claim of insufficient evidence is reviewed de novo, *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995), and the evidence is viewed "in a light most favorable to the prosecution" to determine "whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt," *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, mod 441 Mich 1201 (1992). In assessing the evidence, all conflicts are resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). "Due process requires that the prosecutor introduce sufficient evidence which could justify a trier of fact in reasonably concluding that defendant is guilty beyond a reasonable doubt" *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

First-degree premeditated murder requires proof of "willful, deliberate, and premeditated" killing. MCL 750.316; see *Shollaert*, *supra* at 170. Defendant argues that the jury lacked sufficient evidence to find deliberation and premeditation beyond a reasonable doubt. While the defendant need not deliberate for any specific duration of time, premeditation requires a sufficient interval in which the defendant could contemplate a "second look." *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Deliberation and premeditation may be inferred from all the facts and circumstances. *Id.* Because determining a defendant's state of mind is difficult to prove, "minimal circumstantial evidence" will suffice for this element. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001).

Looking at the evidence in a light most favorable to the prosecution and resolving all conflicts in favor of the prosecution, the prosecution presented sufficient evidence of premeditation and deliberation. Defendant told the police that he got his bow and arrow because he "intended to kill these guys." The deliberate act of a pulling back on the bow before releasing also suggests that defendant had an opportunity for a "second look." See *People v Coddington*,

188 Mich App 584, 600; 470 NW2d 478 (1991) (noting that the type of weapon used can establish premeditation). Finally, the length of time between the fight and the killing further establishes that defendant had adequate opportunity to consider his actions.

Viewing the evidence in a light most favorable to the prosecution, a reasonable trier of fact could have concluded beyond a reasonable doubt that the murder was willful, deliberate, and premeditated. Defendant's motion for judgment notwithstanding the verdict was properly denied.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Brian K. Zahra